U.S. Department of Justice

Immigration and Naturalization Service

D7

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 98 092 53534 Office: California Service Center Date: FEB 27 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was originally approved by the Director, California Service Center. Upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the petition, and his reasons therefore. The director subsequently ordered that the approval of the petition be revoked. On appeal, the Associate Commissioner for Examinations withdrew the decision of the director and remanded the petition for further consideration. The director subsequently revoked the approval and certified her decision to the Associate Commissioner for review. The decision of the director will once again be withdrawn and the petition will be remanded for further consideration.

The petitioner, a tire import/export business, seeks authorization to employ the beneficiary temporarily in the United States as its director of purchasing. The director determined that the petitioner had not demonstrated that the petitioning entity is doing business.

On appeal, the petitioner claimed that the evidence submitted demonstrates that the petitioning entity is doing business.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, a managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In a Notice of Intent to Revoke dated December 9, 1998, the director informed the petitioner of adverse information stemming from a Service investigation. The petitioner was afforded thirty days in which to respond to the notice. On April 12, 1999, the director revoked approval of the petition, stating that "[a]s of this date, there is no record of a response to that request." However, the record shows that on January 8, 1999, the Service received a response and supporting documentation from the petitioner. This information was not considered at the time the director revoked approval of the petition.

The case was subsequently remanded to the director to determine whether the petitioner met the eligibility requirements under section 101(a)(15)(L) of the Act.

The director was clearly instructed to consider the evidence submitted by the petitioner in response to the initial intent to revoke the petition. However, the director's most recent revocation is a mere recitation of the petitioner's procedural case history, which acknowledges the fact that the petitioner responded to the initial intent to revoke. There is no indication that the evidence was actually considered in rendering the final decision.

While the director may request any additional evidence deemed necessary to assist her with her determination, she must comply with the Associate Commissioner's instruction to consider the above mentioned evidence.

ORDER: The director's decision of April 5, 2001, is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision which, if adverse, shall be certified to the Administrative Appeals Office for review.